

Office of Thrift Supervision, Treasury

§ 563b.100

(e) Satisfaction of any other requirement or conditions the Office may impose.

[54 FR 49596, Nov. 30, 1989, as amended at 57 FR 14348, Apr. 20, 1992. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.31 Sale of conversion stock.

Each savings association that converts pursuant to this subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR part 563g.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.32 Expenses.

Expenses incurred by a savings association in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a SAIF-insured savings association, shall not be in an amount such that the payment of such expenses would render the proceeds to the association from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

§ 563b.33 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by a savings association would not be an unsafe or unsound practice or represent a sale of control. The Office shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his or her affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of a

savings association generally will be disfavored.

[54 FR 49596, Nov. 30, 1989. Redesignated at 57 FR 49382, Nov. 2, 1992]

Subpart D [Reserved]

Subpart E—Forms

§ 563b.100 Form AC—Application for Conversion.

FORM AC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

APPLICATION FOR CONVERSION

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

Date of Application

GENERAL INSTRUCTIONS

A. Rules as to Use of Form AC

Form AC shall be used by any savings association seeking approval by the Office of conversion from the mutual to the stock form of organization pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations.

B. Application of Rules and Regulations

Attention is directed to § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in § 563b.2 also should be noted.

Item 1. Form of Application

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by part 563b of the Rules and Regulations Applicable to All Savings Associations.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Office, they will be conducted

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by, or as approved by, the Office at the expense of the applicant; and applicant will pay the costs thereof as computed by the Office.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(e)(4) of the Rules and Regulations Applicable to All Savings Associations, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section: (1) That each such person has read this application; (2) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of part 563b of the Rules and Regulations Applicable to All Savings Associations and forms thereunder; and (3) that each such person holds such informed opinion.

Attest:

Applicant _____
By _____

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this item will be a basis for the Office's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be

prepared in accordance with Forms PS and OC, respectively.

Item 4. Form of Proxy

Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. Sequence and Timing of the Plan

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State or other regulatory authorities (other than the Office). Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or direct community marketing of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

Item 6. Record Dates

If the applicant's plan of conversion contains an eligibility record date substantially earlier than one year prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date.

Indicate the circumstances that will require the use of a supplemental eligibility record date.

Item 7. Expenses Incident to the Conversion

Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal .....	.....
Postage and Mailing .....	.....
Printing .....	.....
Escrow or Agent Fees .....	.....
Underwriting Fees .....	.....
Appraisal Fees .....	.....
Transfer Agent Fees .....	.....
Auditing and Accounting .....	.....
Proxy Solicitation Fees .....	.....
Advertising .....	.....
Other Expenses .....	.....
Total .....	.....

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers; if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this item.

2. If the applicant has any category of expense exceeding \$10,000 which is not specified in this item, such expense shall be itemized

rather than including it under the category "Other Expenses".

3. If the solicitation is conducted other than by management of the applicant, the information required in this item shall be provided with respect to the cost of such solicitation.

Item 8. Indemnification

State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director or officer of the applicant will be insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such.

Item 9. Federally Chartered Stock Savings Associations

State whether the converting savings association is applying to amend its charter and bylaws to read in a form consistent with part 552 of the Rules and Regulations Applicable to Federal Savings Associations.

EXHIBITS

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors

Set forth a certified copy or copies of a resolution or resolutions of the board of directors: (1) Adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Deposit Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. Copies of Documents, Contracts and Agreements

Furnish the following documents, contracts and agreements:

- (a) Proposed certificates for capital stock and any other securities to be issued;
- (b) Proposed order forms with respect to the subscription rights;
- (c) Proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(i)(7);
- (d) Any proposed stock option plan and form of stock option agreement;
- (e) Any proposed management employment contracts;
- (f) Any contract described in response to item 6 of Form PS;
- (g) Contracts or agreements with paid solicitors described in response to item 3(b) of Form PS;

(h) Any material loan agreements relating to borrowing by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Office;

(i) Any appraisal agreement or proposed agreement, underwriting contracts or agreements among underwriters;

(j) Any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association;

(k) Any proposed contracts or agreements among members of a group regarding the purchase of unsubscribed shares pursuant to § 563b.3(d)(2);

(l) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion that they are acting independently;

(m) Any documents referred to in the answer to item 8 of Form AC;

(n) Any trustee agreements or indentures;

(o) Any agreements for the making of markets or the listing on exchanges of the stock of the converted savings association.

Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for documents which by their nature cannot be practically expected until a later time required by subdivisions (i) and (k) in which case they shall be furnished in substantially final form.

Exhibit 3. Opinion of Counsel

Furnish an opinion of counsel for the applicant regarding each of the following matters:

- (a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities;
 - (b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan;
 - (c) The legal sufficiency of the applicant's bylaws;
 - (d) The continuation of insurance of the applicant's accounts by the Federal Deposit Insurance Corporation after conversion;
 - (e) The type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted savings association;
 - (f) A certification that the proposed charter and bylaws conform to part 552 of this chapter or if not a statement to that effect.
- Matters listed in subdivisions (b), (c) and (e) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

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Exhibit 4. Federal and State Tax Opinions or Ruling

(a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to the various account holders who receive nontransferable subscription rights to purchase capital stock.

Instruction. The Office recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Office may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Office may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as to the Federal income tax consequences of the plan.

(b) Furnish an opinion of the applicant's tax advisor or, if applicable, a ruling from the appropriate state taxing authority to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be located upon conversion. Such opinion should relate to the applicant and to eligible account holders.

Exhibit 5. Valuation Materials

Furnish any materials required to be filed by § 563b.7 regarding the valuation to the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

Exhibit 6. Notice to Members

Furnish the notices to the applicant's members required by § 563b.4(a) and (b).

Exhibit 7. Other Materials

(a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j)(2).

(b) Furnish all consents required to be filed by § 563b.8(p) and (q).

(c) If applicable, furnish the statement required by item 5 of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) Furnish any powers of attorney employed pursuant to § 563b.8(e)(3).

(e) Furnish the cross reference sheet referred to in § 563b.8(g).

(f) If the applicant wishes to request a waiver of compliance in accordance with § 563b.1(c), furnish the materials required by § 563b.1(c)(2).

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Exhibit 8. Business Plans

(a) Furnish a consolidated business plan. The converting association shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

(b) Applicant should follow § 563b.4(c) if the business plan is to be deemed confidential.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22735, May 3, 1994]

§ 563b.101 Form PS—Proxy Statements.

FORM PS

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

PROXY STATEMENT

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

PROXY STATEMENT FORM

Index to Items

- Item 1. Notice of Meeting
- Item 2. Revocability of Proxy
- Item 3. Persons Making Solicitation
- Item 4. Voting Rights and Vote Required for Approval
- Item 5. Directors and Executive Officers
- Item 6. Management Remuneration
- Item 7. Business of the Applicant
- Item 8. Description of the Applicant's Plan of Conversion
- Item 9. Description of Capital Stock
- Item 10. Capitalization
- Item 11. Use of New Capital
- Item 12. New Charter, Bylaws or Other Documents
- Item 13. Other Matters
- Item 14. Financial Statements
- Item 15. Consents of Experts and Reports
- Item 16. Attachments

INFORMATION REQUIRED IN CONVERSION PROXY STATEMENT

Notes

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who